IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.385 OF 2005
IN
SUMMARY SUIT NO.5760 OF 1998

The Kapol Co-operative Bank Ltd. ....Plaintiff
V/s.
M/s.Shahsons & Ors. ....Defendants

Mr.K.M. Sangani for the Plaintiff.
Mr.Rajendra Singh i/b Mr.S.M. Jain for Defendant Nos.1, 2, 3 and 5.

CORAM : S.J. VAZIFDAR, J.
DATED : 28TH NOVEMBER, 2005.

P.C. :

1. The suit is filed to recover an amount of Rs.4,22,645=64 ps. together with interest thereon. The suit is based on a guarantee issued by Defendant No.1 in favour of the Plaintiff. The remaining Defendants are the partners of Defendant No.1. The guarantee is dated 4.4.1990. The guarantee was issued in lieu of the security deposits/performance guarantees issued by the Plaintiff on behalf of the Defendants in favour of M/s.Hyderabad Allwyn Ltd.

2. The execution of the guarantee is admitted. The consideration is admitted. It is also admitted that pursuant to the invocation of the back to back

guarantees, the Plaintiff has made payment to M/s.Hyderabad Allwyn Ltd.

3. There is thus no defence to the suit. As far as the question of interest is concerned, the interest has been claimed in the suit on the said sum of Rs.4,22,645=64 ps. However, the said sum of Rs.4,22,645=64 ps. is itself inclusive of interest. The principal sum adjudged would in any event not be less than Rs.2,00,000/- after giving credit for and taking into consideration the payments aggregating to Rs.3,00,000/-.

4. An undertaking was given to return all the securities created by the Defendants in favour of the Plaintiff in so far as the suit guarantee is concerned. The undertaking is accepted. The same shall be returned within four weeks from today.

5. In the circumstances, the Summons for Judgment is made absolute and the suit is decreed as prayed with costs. However, from the date of the suit, the Plaintiff shall be entitled to interest only on the sum of Rs.2,00,000/- and at the rate of 18% p.a.

. Refund as per rules.